

SECTION 00500

FORM OF AGREEMENT

BETWEEN OWNER AND CONTRACTOR

ON THE BASIS OF A STIPULATED PRICE

**THIS AGREEMENT** is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2014 by and between the Board of Public Works and Safety, West Lafayette, Indiana (hereinafter called OWNER) and Custom Cuts Lawn Care Inc. (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Furnish all labor, delivery, storage, maintenance, supervision, materials, equipment, supplies both temporary and permanent to install 800 trees.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**West Lafayette, Indiana  
Tree Replacements for Western Sanitary Sewer Interceptor – Division II**

**Article 2. ENGINEER**

The Project has been designed by Greeley and Hansen who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**Article 3. CONTRACT TIMES**

**3.1 Substantial Completion**

All Work shall be substantially completed by November 15, 2014.

3.2 Final Completion and Readiness for Final Payment

All Work shall be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions by December 1, 2014.

3.3 Liquidated Damages

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraphs 3.1 and 3.2 above plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Five Hundred dollars (\$500) for each calendar day that expires after the time specified for Substantial Completion. CONTRACTOR shall pay OWNER Five Hundred dollars (\$500) for each calendar day that expires after the time specified for Final Completion and Readiness for Final Payment.

**Article 4. CONTRACT PRICE**

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the total sum of the amounts determined pursuant to the CONTRACTOR's Bid (See Article 7.4).

As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
1	73	Furnish, install and maintain <b>2" Caliper Hackberry</b> , complete in place as shown and specified for the unit price of <u>One Hundred Ninety Six</u> dollars and <u>Twenty Five</u> cents.	<u>\$196.25</u>	<u>\$14,326.25</u>

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
2	73	Furnish, install and maintain <b>2" Caliper Sugar Maple</b> , complete in place as shown and specified for the unit price of <u>One Hundred Ninety Five</u> dollars and <u>Fifty Five</u> cents.	\$ <u>195.55</u>	\$ <u>14,275.15</u>
3	73	Furnish, install and maintain <b>2" Caliper Sterling Silver Linden</b> , complete in place as shown and specified for the unit price of <u>Two Hundred Fifty Eight</u> dollars and <u>Ninety</u> cents.	\$ <u>258.90</u>	\$ <u>18,899.70</u>
4	73	Furnish, install and maintain <b>2" Caliper Black Gum</b> , complete in place as shown and specified for the unit price of <u>Two Hundred Fifty Six</u> dollars and <u>Twenty Five</u> cents.	\$ <u>256.25</u>	\$ <u>18,706.25</u>
5	73	Furnish, install and maintain <b>2" Caliper Swamp White Oak</b> , complete in place as shown and specified for the unit price of <u>Two Hundred Thirty Five</u> dollars and <u>Zero</u> cents.	\$ <u>235.00</u>	\$ <u>17,155.00</u>
6	73	Furnish, install and maintain <b>2" Caliper Northern Red Oak</b> , complete in place as shown and specified for the unit price of <u>Two Hundred Thirty Nine</u> dollars and <u>Ninety</u> cents.	\$ <u>239.90</u>	\$ <u>17,512.70</u>

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
7	73	Furnish, install and maintain <b>2" Caliper Shumard Oak</b> , complete in place as shown and specified for the unit price of <u>Two Hundred Thirty Nine</u> dollars and <u>Ninety</u> cents.	<u>\$239.90</u>	<u>\$17,512.70</u>
8	73	Furnish, install and maintain <b>2" Caliper Allee or Frontier Elm</b> , complete in place as shown and specified for the unit price of <u>One Hundred Forty Nine</u> dollars and <u>Seven</u> cents.	<u>\$149.07</u>	<u>\$10,882.11</u>
9	73	Furnish, install and maintain <b>2" Caliper Seedless Sweetgum</b> , complete in place as shown and specified for the unit price of <u>Two Hundred Fifty Nine</u> dollars and <u>Ninety</u> cents.	<u>\$259.90</u>	<u>\$18,972.70</u>
10	73	Furnish, install and maintain <b>2" Caliper Male Kentucky Coffeetree</b> , complete in place as shown and specified for the unit price of <u>One Hundred Ninety Eight</u> dollars and <u>Twenty Five</u> cents.	<u>\$198.25</u>	<u>\$14,472.25</u>
11	70	Furnish, install and maintain <b>2" Caliper Tulip</b> , complete in place as shown and specified for the unit price of <u>Two Hundred Three</u> dollars and <u>Twenty Five</u> cents.	<u>\$203.25</u>	<u>\$14,227.50</u>

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
12	800	Furnish, install and maintain <b>Tree Staking</b> , complete in place as shown and specified for the unit price of <u>Seven</u> dollars and <u>Seventy Five</u> cents.	\$ <u>7.75</u>	\$ <u>6,200.00</u>

**TOTAL BID PRICE** (Total of All Contract Item Prices)

One Hundred Eighty Three Thousand One Hundred Forty Two Dollars and Thirty One Cents  
(Amount in Words)

\$183,142.31  
(Amount in Figures)

#### **Article 5. PAYMENT PROCEDURES**

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

##### **5.1 Progress Payments; Retainage**

OWNER shall make progress payments on the basis of CONTRACTOR's Applications for Payment, on or about the thirtieth day of each month during performance of the Work as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

Progress payments shall not exceed an amount equal to 90 percent of the Work completed and of the cost of materials not incorporated in the Work but delivered and suitably stored (with the balance being retainage). If the Work is 50 percent complete as determined by ENGINEER, and if the character and progress of the Work have been

satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Work completed less the aggregate of payments previously made; and

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95 percent of the Work completed, less such amounts as ENGINEER shall determine, in accordance with paragraph 14.02.B.5 of the General Conditions.

5.1.3 Upon issuance and OWNER'S execution of a Certificate of Substantial Completion, OWNER may reduce the retained amount to not less than two hundred percent (200%) of the cost of the Work remaining to be completed, corrected or accepted.

## 5.2 Final Payment

Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

## **Article 6. CONTRACTOR'S REPRESENTATIONS**

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

6.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data".

6.2 CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

6.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.

6.4 CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in

paragraph 4.06 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions as to the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02B of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.

- 6.5 CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.
- 6.6 CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 6.7 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- 6.8 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 6.9 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **Article 7. CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 7.1 This Agreement, identified as Section 00500
- 7.1.1 Performance and Payment Bonds, identified as Sections 00610 and 00620
- 7.2 Notice to Proceed, identified as Section 00680
- 7.3 CONTRACTOR'S BID, identified as Section 00300
- 7.4 Standard General Conditions, identified as Section 00700
- 7.5 Supplementary Conditions, identified as Section 00800
- 7.6 Specifications bearing the title City of West Lafayette, Indiana Tree Replacements for Western Sanitary Sewer Interceptor – Division II
- 7.7 Addenda (numbers 1 to 2, inclusive)
- 7.8 Exhibit A, Figures
- 7.9 Exhibit B, INDOT Permit

The documents listed in the paragraphs above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.05 of the General Conditions.

#### **Article. 8 MISCELLANEOUS**

- 8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.



- 8.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 8.5 This Contract is to be governed by the law of the State of Indiana. Venue for all disputes arising under this Contract shall be Tippecanoe County, Indiana.
- 8.6 Notwithstanding any term or condition in this Contract to the contrary, in the event litigations is commenced to enforce any term or condition of this Contract, the prevailing party shall be entitled to costs and expenses of litigation including a reasonable attorney fee.
- 8.7 By signing this Contract, CONTRACTOR certifies that it is not engaged in investment activities in the country of Iran as set forth in I.C. 5-22-16.5.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER, and CONTRACTOR. All portions of the Contract Documents have been signed, or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on \_\_\_\_\_, \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER: Board of Public Works and Safety  
City of West Lafayette

CONTRACTOR: Custom Cuts Lawn Care Inc

By: \_\_\_\_\_

By: Mark Clavin

Title: \_\_\_\_\_

Title: President

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

711 West Navajo Street

3812 S. 18<sup>th</sup> Street

West Lafayette, IN 47906

Lafayette, IN 47909

(If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement)

License No. \_\_\_\_\_

Agent for service of process: \_\_\_\_\_

(If CONTRACTOR is a corporation or partnership, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: \_\_\_\_\_

Name: Matthew Marmon

Title: \_\_\_\_\_

Title: President

Address: \_\_\_\_\_

Address: 3816 S 18<sup>th</sup> St

LAFAYETTE IN 47909

Phone: \_\_\_\_\_

Phone: 765-490-4160

Fax: \_\_\_\_\_

Fax: 765-471-2405

END OF SECTION